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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

PSALM JAVIER CASTILLO,

Defendant and Appellant.

G049357

(Super. Ct. No. R00564)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Sheila F. Hanson, Judge. Affirmed.

Susan S. Bauguess, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and James H. Flaherty III, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Psalm Castillo appeals from the imposition of a 180-day sentence for violating the conditions of his post-release community supervision. The grounds of Castillo's appeal are not entirely clear. He seems to argue, first, that he committed no offense warranting revocation of his supervision, then that he should not have been jailed for what he did, and, finally, that 180 days was too long.

The latter two issues – the type and duration of the sentence – are committed to the court's discretion, and in light of Castillo's repeated violations of the conditions of his supervision, we find no abuse of discretion. On the first issue, he is incorrect. One of the conditions of his supervision was that he refrain from using drugs; another was that he cooperate with drug treatment programs. After being released from custody for a previous violation, he once again used drugs, and he walked away without permission from a drug treatment center. We affirm the judgment.

FACTS

In October 2009, Castillo was arrested for possessing drug paraphernalia and for possessing ammunition in violation of Penal Code section 12316, subdivision (b)¹ (now § 30300). Castillo pleaded guilty to both charges in May 2010 and was sentenced to two years in state prison.

Castillo was released from prison into post-release community supervision on February 9, 2012. The supervision was to expire on February 8, 2015. The terms and conditions of his supervision required him to refrain from drug use or from being around drug users; submit to drug testing; cooperate with drug counseling plans; and refrain from associating with parolees, people under community supervision, or drug users or sellers. He also had to report to his probation officer within two working days of any release from custody, and he had to tell his probation officer about a change of residence in

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The code section applied to him because he was convicted in 2005 of battery against a cohabitant. All further statutory references are to the Penal Code.

advance. Castillo was informed of the requirements of his supervision on February 10, 2012.

By the end of April 2012, Castillo had already violated the terms of his supervision. He had not reported to his probation officer and “[h]is whereabouts [were] unknown.” The probation department petitioned for an arrest warrant on May 30, 2012, and the court issued the warrant on June 4. In July the probation department recommended that the warrant be recalled because the intermediate sanctions of section 3454, subdivision (b), were a sufficient response.² The warrant was recalled.

In August 2012, Castillo was arrested for destroying evidence; he discarded and stepped on a glass methamphetamine pipe in the presence of a police officer. Castillo was cited and released, but he failed to report to his probation officer within 48 hours of his release from custody. In September, the probation department petitioned to revoke Castillo’s community supervision based on his arrest for destroying evidence, his failure to report and to be tested for drugs, and his discharge from a drug treatment program for non-compliance. The probation report also noted that he had tested positive for methamphetamines twice at the end of April 2012.

The court heard the petition at the end of September 2012. Castillo admitted the violation and was sentenced to 90 days in county jail with credit for time served; he was released on October 12, 2012. He was given a referral to a drug treatment program, but he never signed up. He also failed to report for drug testing in October and November. The court issued an arrest warrant on December 7, 2012, for failure to report and failure to enroll in a drug treatment program.

Castillo was arrested on March 29, 2013 (on the December 7 warrant), in company with three other people, one of whom was a parolee. The other two had

² The intermediate sanction was apparently a 10-day “flash” incarceration in June 2012. (See § 3454, subds. (b), (c).)

outstanding warrants. A search of the house revealed drug paraphernalia and weapons. Castillo received another 10-day “flash” incarceration. He was released on April 7.

In April and May 2013, Castillo twice tested positive for methamphetamines. He also failed to report for drug testing in April and early May. He was arrested again in May 2013 and served another 10-day “flash” incarceration.

In early June, the probation department again petitioned to revoke Castillo’s supervision for failure to report. At the hearing on June 5, 2013, Castillo admitted the violation, and he was sentenced to another 90 days in jail. He did not serve the full sentence.

At the end of July 2013, Castillo again tested positive for methamphetamines. He also admitted to drug use. He was enrolled in a residential drug program at Phoenix House from July 30 to September 30, when he was discharged.³ According to testimony at his hearing, he had had an altercation with one of the counselors and left without permission.

Castillo was taken into custody again on October 2, 2013. A petition for revocation of community supervision was filed on October 8 and heard on October 30. The court found sufficient grounds to revoke his supervision, based on his leaving Phoenix House before being discharged from the program and his admitted drug use, in addition to the positive drug tests. At the close of the sentencing hearing on November 1, the court revoked Castillo’s community supervision and sentenced him to 180 days in county jail, with reduction of time served. The court considered the witnesses who had testified in his favor, his track record, and the necessity for accountability as a disincentive to straying from sobriety.

³

The program was a 90-day program, so Castillo still had a month to go.

DISCUSSION

Section 3451, subdivision (a), provides: “Notwithstanding any other law and except for persons serving a prison term for any crime described in subdivision (b), all persons released from prison on and after October 1, 2011, or, whose sentence has been deemed served pursuant to Section 2900.5 after serving a prison term for a felony shall, upon release from prison and for a period not exceeding three years immediately following release, be subject to community supervision provided by a county agency designated by each county’s board of supervisors which is consistent with evidence-based practices, including, but not limited to, supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism among individuals under postrelease supervision.” Section 3453 sets out the minimum conditions of post-release community supervision, and section 3454 permits county agencies to impose additional conditions and “determine and order appropriate responses to alleged violations,” including flash incarceration. Section 3455 allows the supervising agency to petition the court to revoke supervision and gives the hearing officer authority to send the offender to jail for up to 180 days.

As both Castillo and the Attorney General recognize, we review sentencing decisions such as the ones made here for abuse of discretion. (See *People v. Rodriguez* (1990) 51 Cal.3d 437, 443 [revocation of probation]; *People v. Downey* (2000) 82 Cal.App.4th 899, 909-910 [reinstatement of probation]; *People v. Hernandez* (1984) 160 Cal.App.3d 725, 749 [severity of sentence rests in trial court’s discretion].) “The burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review. [Citations.]” (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.)

Although Castillo represented to the court, both in his testimony at the revocation hearing and through his witnesses at the sentencing hearing, that he had turned his life around, the record tells quite a different story. In the 19 months between his release from prison and the arrest that underlies this appeal, he had consistently and flagrantly violated the terms of his community supervision. He tested positive for drugs and failed to enroll in a drug treatment program. He failed to report for drug testing, strongly suggesting his recognition that the tests would be positive. More to the point here, he had been arrested twice, he had been sent to jail for 90 days twice, although it appears that he did not serve his full sentence either time, and he had had three “flash” incarcerations, which are supposed to serve as wake-up calls. They did not wake up Castillo.

His argument that except for leaving the Phoenix House program, he “was successfully progressing in the program” falls on deaf ears. The race may or may not always go to the swift afoot, but it never goes to non-finishers. While he is right that leaving the program did not constitute a criminal offense, it was certainly another failure to comply with the mandates of his release. The court was well within its discretion when it concluded that intermediate sanctions and leniency were not working and that Castillo needed something stronger than he had already received to persuade him to get back on track.

If Castillo is maintaining that the trial court had insufficient grounds to revoke his supervision and send him to jail, he is simply wrong. Substantial evidence supported a finding that he had violated the terms of his supervision. The admitted drug use and the positive drug tests alone support the revocation, especially given the repetition of these violations over the course of the supervision. If substantial evidence supports a trial court’s finding, we affirm. (See *People v. Yim* (2007) 152 Cal.App.4th 366, 369-370; *People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849.) The evidence supported the finding here.

DISPOSITION

The judgment is affirmed.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.